

Order 27-19/20

Passage: 5-0 (Strimling, Batson and Costa absent, Thibodeau recused) on 8/12/2019

Effective 8/22/2019

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE SECOND AMENDMENT TO LEASE WITH VERIZON
WIRELESS RE: JETPORT TERMINAL ROOF FACILITY**

ORDERED, that the five-year lease between the City of Portland and Bell Atlantic Mobile Systems of Allentown, Inc., doing business as Verizon Wireless, for rooftop space at the Portland Jetport is hereby approved in substantially in the form attached; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of this order.

SECOND AMENDMENT TO BUILDING AND ROOFTOP LEASE AGREEMENT

This Second Amendment to Building and Rooftop Lease Agreement (“Second Amendment”) is made, and shall be effective, as of the last date of the signatures below (“Effective Date”), between City of Portland, Maine (“LESSOR”), and Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless (“LESSEE”). LESSOR and LESSEE (or their predecessors in interest) are parties to that certain Building and Rooftop Lease Agreement dated January 19, 2006, as may have been previously amended and/or assigned, (the “Lease”), pursuant to which LESSEE is leasing or licensing from LESSOR a portion of that certain property located at 1001 Westbrook Street, in the City of Portland, County of Cumberland, State of Maine, as more particularly described in the Lease. LESSOR and LESSEE may be referenced in this Second Amendment individually as a “Party” or collectively as the “Parties.”

In consideration of the mutual covenants and promises contained in this Second Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to amend the Lease as follows:

1. Term; Extension Terms. Notwithstanding anything contained in the Lease to the contrary, the Lease shall expire on January 31, 2020. Commencing on February 1, 2020, provided that LESSEE is not in default under the Lease beyond any applicable cure period, the Lease shall be extended for 5 years until January 31, 2025 (“Initial Extension Term”). Thereafter, provided that LESSEE is not in default under the Lease beyond any applicable cure period, the term of the Lease shall automatically extend for 5 additional terms of 5 years each (each, an “Additional Extension Term”), unless LESSEE terminates the Lease by giving LESSOR notice of such termination at least 30 days prior to the expiration of the Initial Extension Term or then-current Additional Extension Term.

2. Rent. Notwithstanding anything contained in the Lease to the contrary, commencing on February 1, 2020, the annual rent during the Initial Extension Term shall be \$29,700.00 to be paid in equal monthly installments on the first day of the month in advance to LESSOR or such other person as LESSOR may designate in writing at least 30 days in advance of any rental payment date. Beginning on February 1, 2025, and on each anniversary of February 1, 2025 thereafter, the annual rent shall increase by 3% over the annual rent then in effect.

3. Exhibit B in the Lease, which is comprised of 12 pages, is hereby deleted in its entirety and replaced with Exhibit B-1, which is attached hereto. All references to Exhibit B in the Lease shall be deemed to refer to Exhibit B-1

4. Sections 3, 4, and 5 of the Lease are hereby deleted in their entirety.

5. Rent Guarantee for Initial Extension Term. In the event that the Lease is terminated prior to the end of the Initial Extension Term as a result of LESSEE’s default or as a result of LESSEE exercising its voluntary termination right as set forth in Section 6 of the Lease, LESSEE hereby guarantees its obligation to pay rent through the end of the Initial Extension Term (“Rent Guarantee”). Upon such early termination of the Lease, LESSEE shall pay LESSOR, without notice or demand, all rent and any other amounts due under the Lease

through the end of the Initial Extension Term. The foregoing Rent Guarantee is intended to guarantee rent only and shall not be construed in any manner so as to limit LESSEE's rights to terminate the Lease as set forth therein. Notwithstanding anything herein to the contrary, LESSEE's obligation under the Rent Guarantee shall not continue if the Lease is terminated as a result of LESSOR's default under the Lease or as a result of any other action or inaction by LESSOR not attributable to LESSEE's default.

6. **Holdover.** Notwithstanding anything contained in the Lease to the contrary, the Parties agree that a holding over beyond the expiration or termination of the Lease shall operate as an extension of the Lease from month-to-month only (the "Holdover Period"), with rent due monthly in an amount equaling the monthly rent applicable during the month immediately preceding such expiration or earlier termination. Either Party may terminate the Lease at the end of any month during the Holdover Period by providing 30 days written notice.

7. **Rent Credit.** This Second Amendment provides for a reduction in rent, effective February 1, 2020. LESSEE and LESSOR agree and acknowledge that LESSEE shall be entitled to a credit in the event of any overpayment of rent resulting from said reduction in rent. Such credit shall be applied against LESSEE's rent due under the Lease.

8. Section 6 of the Lease is hereby deleted in its entirety and replaced with the following:

Use, Governmental Approvals. LESSEE shall use the Premises for the Purpose of constructing, maintaining and operating a communications facility and uses incidental thereto, with LESSEE's initial installations being substantially as described in Exhibit B-1 to the Lease. LESSEE will maintain the leased portion of the roof in a weather tight condition. All improvements, equipment, antennas and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall, within the Premises, have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, so long as such replacement, repair, addition or modification does not result in an adverse impact on the Airport, the Terminal, or the CITY's other tenants at the Airport, including but not limited to a material change in height of LESSEE's equipment, or use of the Premises ("Approved Modifications"). All other LESSEE modifications to the Premises ("LESSEE Modifications") shall require LESSOR's prior written approval of site plans or schematics showing the proposed LESSEE Modifications and, where applicable, a structural analysis, such approval not to be unreasonably withheld, conditioned, denied or delayed. In no event shall LESSOR condition approval of LESSEE Modifications within the Premises area on an increase in rent. In the event LESSOR does not provide LESSEE with an approval or objection to the proposed LESSEE Modifications within thirty (30) days of LESSEE's written request, LESSOR's consent shall be deemed to have been granted. LESSEE will maintain the Premises in good condition, reasonable wear and tear excepted. LESSOR will maintain the Terminal excluding the Premises in good condition, reasonable wear and tear excepted. It is understood and agreed that that LESSEE's ability to use the Premises is contingent upon its obtaining all of the certificates, permits and other approvals (collectively, the "Government Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis which will permit LESSEE's use of the Premises as set forth above. LESSOR will cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Terminal with respect to the proposed use

thereof by LESSEE. In the event that any of such applications for such Governmental Approvals should be finally rejected or LESSEE determines that such Governmental Approvals may not be obtained in a timely manner or any Governmental Approval issued to LESSEE is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or that the LESSEE determines that the site is no longer technically compatible for its use or that LESSEE, in its sole discretion, will be unable to use the Premises for its intended purposes, LESSEE shall have the right to terminate this Agreement. LESSEE's notice of its exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by the LESSEE. All rentals paid to said termination date shall be retained by the LESSOR. Upon such termination, this Agreement shall become null and void and the parties shall have no further obligations including the payment of money, to each other, except for obligations that survive termination of this Agreement as set forth in section 27.

LESSOR acknowledges and agrees that any provision in the Lease that provides for (i) LESSEE to obtain LESSOR's consent for Approved Modifications prior to making Approved Modifications or send notice to LESSOR prior to making Approved Modifications, (ii) an increase in rent as consideration for Approved Modifications or an increase in rent as consideration for LESSEE Modifications within the Premises area, (iii) LESSEE to submit engineering designs, including but not limited to, a structural analysis, to LESSOR for approval prior to making Approved Modifications and (iv) an amendment to memorialize LESSEE Modifications or Approved Modifications, are hereby deleted.

9. Insurance. Section 8 of the Lease shall be deleted in its entirety and is hereby replaced with the following:

Notwithstanding anything in this Agreement to the contrary, the following insurance requirements shall apply to this Lease:

Upon the execution of this Agreement, the LESSEE will procure and maintain occurrence based Commercial General Liability Insurance with a limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage, and occurrence based Commercial Automobile Liability Insurance in an amount of One Million Dollars (\$1,000,000.00) with a combined single limit per occurrence for bodily injury, death and property damage, including the CITY as an additional insured as its interest may appear under this Agreement, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Commercial General Liability and Automobile Insurance, the LESSEE shall include the CITY as an additional insured as its interest may appear under this Agreement for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY. Upon the execution of this Agreement, the LESSEE shall furnish the CITY and thereafter maintain certificates of Insurance evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the CITY of termination of insurance from the insurance provider or agent. LESSEE shall also provide a copy of the additional insured endorsement including the CITY as additional insured. A certificate that merely

has a box checked under "Addl Insr," or the like, or that merely states the CITY is included as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall waive all rights of subrogation against the CITY, its officers or employees, and LESSEE shall provide CITY with evidence of such waiver. LESSEE shall be responsible for any and all deductibles and/or self-insured retentions. CITY's acceptance or lack of acceptance of LESSEE's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the LESSEE's obligation to obtain and maintain such insurance as required by this agreement. In the event that the LESSEE requires access to the CITY's network, or if the LESSEE will be accessing or storing any sensitive CITY data, the CITY may also require LESSEE to carry cyber liability insurance.

LESSEE shall maintain such casualty insurance as it deems necessary and such policies shall waive all rights of subrogation against the CITY, its officers or employees. In no event shall the CITY be responsible or liable for any damage to property owned, placed or maintained by LESSEE at the Airport.

The insurance requirement contained hereunder may be reasonably increased by the CITY at any time upon prior written notice to the LESSEE.

10. Continued Effect. Except as amended hereby, all of the other terms and conditions of the Lease shall remain in full force and effect. In the event of a conflict between any term and provision of the Lease and this Second Amendment, the terms and provisions of this Second Amendment shall control. In addition, except as otherwise stated in this Second Amendment, all initially capitalized terms shall have the same respective defined meaning stated in the Lease. All captions are for reference purposes only and shall not be used in the construction or interpretation of this Second Amendment.

11. Ratification and Reaffirmation. LESSOR and LESSEE do hereby ratify, reaffirm, adopt, contract for and agree to be, or continue to be, bound by all of the terms and conditions of the above-referenced Lease. Except as modified by this Second Amendment, all of the terms and conditions of the Lease are incorporated by reference herein as if set forth at length. It is acknowledged and agreed that the execution of this Second Amendment by the Parties is not intended to and shall not constitute a release of either Party from any obligation or liability which said Party has to the other pursuant to the Lease.

[SIGNATURE PAGE TO FOLLOW]

LESSEE Site Name: Portland International Jetport, ME
LESSEE Location Code: 136440

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto execute this Second Amendment below, intending to be bound.

LESSOR:

City of Portland, Maine

By: _____
Name: Jon P. Jennings
Title: City Manager
Date: _____

LESSEE:

Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless

By: _____
Name: Margaret Salemi
Title: Director-Network Engineering & Ops
Date: _____